lessee, even if the lessor is ultimately to reimburse him therefor. *Conant* v. *Brackett, supra*; *Rothe* v. *Bellingrath, supra*. *A fortiori* there is no consent in the principal case, since the lessor expressly denies the lessee the use of his credit. Some decisions hold the lien runs against the lessor, relying on the express wording of their state statutes. *Carey-Lombard Lumber Co.* v. *Jones*, 187 Ill. 203, 58 N. E. 347; *Burkitt* v. *Harper*, 79 N. Y. 273. Others obtain this result by incorrectly inferring a fictitious agency between lessor and lessee and construing an improvement lease as a building contract. *Hall* v. *Parker*, 94 Pa. St. 109; *Kremer* v. *Walton*, 11 Wash. 120.

PRESUMPTIONS — EXISTENCE AND EFFECT OF PRESUMPTIONS IN PARTICULAR CASES — DEATH AFTER SEVEN YEARS. — In 1873 the intestate's sister, thirty-four years of age, disappeared from the house where she had been a domestic servant for ten years, leaving behind all her personal effects, and was not heard of thereafter. In 1910 the intestate died, leaving property to a part of which the sister would be entitled if living. The other heirs claimed the whole estate. *Held*, that the death of the sister is not established. *In re Benjamin*, 137 N. Y. Supp. 758 (Surr. Ct., N. Y. Co.).

Conclusive presumptions are rules, not of evidence, but of law. But presumptions, when legitimately applied, are presumptions of fact and leave the matters assumed open to further proof. The burden of going ahead is merely shifted to the other party. *Scott* v. *McNeal*, 154 U. S. 34, 14 Sup. Ct. 1108. See *Hoyt* v. *Newbold*, 45 N. J. L. 219, 222. In general a person is presumed to be alive until after such time as he would die of old age. See *Hammond's Lessee* v. *Indoes*, 4 Md. 138, 174; *Hopfensach* v. *City of New York*, 173 N. Y. 321, 324, 66 N. E. 11, 12. By judicial legislation, a series of cases, following the analogy of two seventeenth-century statutes, created an arbitrary presumption of death after seven years' absence. *Doe* v. *Jesson*, 6 East 80; *Hopewell* v. *De Pinna*, 2 Campb. 113. See *Burr* v. *Sims*, 4 Whart. (Pa.) 150, 170. In many jurisdictions continuous unexplained absence for seven years without tidings will raise the presumption of fact in spite of other circumstances surrounding the disappearance. *Wentworth* v. *Wentworth*, 71 Me. 72. See *Schaub* v. *Griffin*, 84 Md. 557, 563, 36 Atl. 443. Under such a rule the principal case would undoubtedly be wrong. But it is submitted that additional circumstances, such as youth, health, or a roving disposition, should in certain cases prevent the creation of the presumption. Thus, the presumption, which is convenient in many cases, will not necessarily cause injustice if the adverse party has no rebutting evidence. *Czech* v. *Bean*, 35 N. Y. Misc. 729, 72 N. Y. Supp. 402; *Vought* v. *Williams*, 120 N. Y. 253, 24 N. E. 195. In the principal case, the circumstances surrounding the disappearance hardly seem to furnish grounds to deny the ordinary presumption.

PROHIBITION — WHETHER A WRIT OF RIGHT. — The petitioner, being threatened by an unconstitutional tribunal, demanded a writ of prohibition. On refusal, a petition to establish exceptions was brought. *Held*, that the petition will be allowed. *Curtis* v. *Cornish*, 84 Atl. 799 (Me.).

The principal case seeks to rely on the principle laid down by the United States Supreme Court that a writ of prohibition issues of right in the absence of other means of redress, and at discretion where there is another legal remedy. *Smith* v. *Whitney*, 116 U. S. 167, 6 Sup. Ct. 570; *In re Cooper*, 143 U. S. 472, 12 Sup. Ct. 453. But the application seems doubtful, since *certiorari* or a writ of error would be available, though probably inadequate, alternative remedies. Many American courts treat the writ as wholly discretionary and hence not reviewable on appeal. *State ex rel. Osborn* v. *Houston*, 35 La. Ann. 538; *People ex rel. Adams* v. *Westbrook*, 89 N. Y. 152. In England the remedy ordinarily

issues of right. *Farquharson* v. *Morgan*, [1894] 1 Q. B. 552; *Worthington* v. *Jeffries*, L. R. 10 C. P. 239, 280; *Chambers* v. *Green*, L. R. 20 Eq. 552, 555. Logically prohibition is the exact counterpart of mandamus. See *Thomas* v. *Mead*, 36 Mo. 232, 247. The latter is invoked to compel exercise of jurisdiction by an inferior court; the former, to prohibit a threatened usurpation or abuse of jurisdiction. *In the Matter of Turner*, 5 Oh. 542; *Connecticut River R. Co.* v. *County Commissioners of Franklin*, 127 Mass. 50. Mandamus, like prohibition, originated as a royal prerogative issuing at the discretion of the king in the exercise of his police powers. See *Awdley* v. *Joy*, Poph. 176; *King* v. *Barker*, 1 W. Bl. 351; 3 Bl. Comm. 111. The obvious repugnance of this conception to our form of government has led the majority of American courts to treat mandamus as issuing of right, and hence as subject to review. *Hartman* v. *Greenhow*, 102 U. S. 672; *Gilman* v. *Bassett*, 33 Conn. 298. By applying the same reasoning to prohibition, the writ should issue of right, even when as in the principal case an inadequate legal remedy is also available.

RESTRAINT OF TRADE — SHERMAN ANTI-TRUST LAW — COMBINATION OF COMPETING RAILROADS. — The Union Pacific Railroad Company bought a controlling interest in the stock of the Southern Pacific Company. The two railroads did a large amount of competitive business, though such business was but a small part of all the traffic carried by them. *Held*, that the transaction constitutes a combination in restraint of trade under the Sherman Anti-Trust Law. *United States* v. *Union Pacific R. Co.*, 226 U. S. 61, 33 Sup. Ct. 53.

The Standard Oil case, holding that only undue restraints of trade are forbidden by the Sherman Anti-Trust Law, intimated that that combination might have been lawful had it not been for the unfair methods used in crushing competitors. *Standard Oil Co.* v. *United States*, 221 U. S. 1, 31 Sup. Ct. 502. See 25 HARV. L. REV. 31. Before that decision a combination of competing railroads was clearly regarded as within the act. *United States* v. *Trans-Missouri Freight Association*, 166 U. S. 290, 17 Sup. Ct. 540; *United States* v. *Joint Traffic Association*, 171 U. S. 505, 19 Sup. Ct. 25; *Northern Securities Co.* v. *United States*, 193 U. S. 197, 24 Sup. Ct. 436. The merger of competing railroads was considered inimical to the public welfare because of their public nature and practical monopoly. See *Northern Securities Co.* v. *United States*, 193 U. S. 197, 363, 24 Sup. Ct. 436, 467; *Louisville & Nashville R. Co.* v. *Kentucky*, 161 U. S. 677, 697, 698, 16 Sup. Ct. 714, 722. The principal case affirms the principle that the suppression of outside competitors is not essential to constitute undue restraint of trade in such a case, whatever may be the rule in regard to industrial combinations. See 25 HARV. L. REV. 71. The case further holds that even though the competitive business constitutes but a small portion of the total business transacted, if its amount is considerable the entire combination is illegal. The result shows, also, consistently with the "rule of reason" adopted in the Standard Oil case, that the form of the transaction producing the undue restraint is immaterial. *United States* v. *American Tobacco Co.*, 221 U. S. 106, 31 Sup. Ct. 632. Conceding the undue restraint, the purchase by one company of a controlling interest in the stock of a competitor is a "combination" within the act. *United States* v. *Terminal R. Association of St. Louis*, 224 U. S. 383, 32 Sup. Ct. 507.

RESTRAINT OF TRADE — SHERMAN ANTI-TRUST LAW — CONTROL OF COAL MARKET BY CONTRACTS TO PURCHASE OUTPUT OF COMPETITORS. — The six defendant carriers controlled the means of transportation from the district in which is located all the anthracite coal of the country. The proposed building of a new railroad into the district was defeated by the carriers' taking the stock in a new company formed by them to purchase the coal property from